

REMARKS

Claims 1-6, 11-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Nishimura et al. (US 2004/0126668) (hereinafter: "Nishimura"). Claims 7-10 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nishimura.

The rejections are not proper as stated in the Action because Nishimura is not an effective reference under 35 U.S.C. § 102(e) against the claims of the present application. Nishimura is based on an international application, PCT/JP02/03638, that was filed after November 29, 2000, and that was not published in English. Therefore, it cannot be applied as a reference under 35 U.S.C. § 102(e) as of its international filing date. Nishimura can only be applied as a reference under 35 U.S.C. § 102(a) or § 102(b) as of its publication date, July 1, 2004. This date is subsequent to the filing date of the present application, September 30, 2003.

For this reason alone, removal of the 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) rejections of the claims is believed to be in order and is respectfully requested.

Applicants note that the publication dates of the international application and Japanese priority application on which Nishimura is based are October 24, 2002, and October 25,

2002, respectively. These dates are subsequent to the filing date of September 30, 2002, of applicants priority application, Japanese patent application No. 2002-284740.

In order to perfect applicants' claim to priority and remove the above-noted publications as possible references against the claims of the present application, submitted herewith is an English translation of Japanese patent application No. 2002-284740, and a translator's statement.

Applicants also submit that the disclosure of Nishimura fails to anticipate or render obvious the claims of the present application. The Office relies on Example 1 of Nishimura as disclosing a nonaqueous electrolyte secondary battery which meets the limitations of claim 1 of the application. However, it is not possible to determine whether the battery of Example 1 of Nishimura satisfies the conditions recited in claim 1. The reference discloses a ratio of vinylene carbonate to an electrolyte and a specific surface area of a carbon material used for a negative electrode. However, it is not possible to determine the content of the cyclic carbonic ester having a carbon-carbon double bond, a ratio of an amount of the carbon material and of vinylene carbonate and values of  $L_a$  and  $L_c$  of the carbon material in the battery of Example 1.

PATENT APPLN. NO. 10/673,350  
RESPONSE UNDER 37 C.F.R. §1.111

**PATENT  
NON-FINAL**

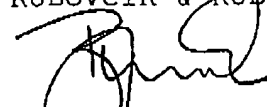
A notice of allowability of the claims of the present application is believed to be in order and is respectfully solicited.

The foregoing is believed to be a complete and proper response to the Office Action dated September 28, 2006, and is believed to place this application in condition for allowance.

In the event that this paper is not considered to be timely filed, applicants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to our Deposit Account No. 111833.

In the event any additional fees are required, please also charge our Deposit Account No. 111833.

Respectfully submitted,  
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Attachment: English Translation of JP 2002-284740 with  
Translator's Statement